

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, *et al.*,

*Plaintiffs,*

v.

JETBLUE AIRWAYS CORPORATION and  
SPIRIT AIRLINES, INC.,

*Defendants.*

Case No. 1:23-cv-10511-WGY

**PLAINTIFFS' MOTION FOR LEAVE TO FILE OPPOSITION TO  
DEFENDANTS' MOTION TO SEAL CERTAIN TRIAL EXHIBITS**

Defendants recently filed a Motion to Seal Certain Trial Exhibits (ECF No. 291) (the Motion), that the Court granted yesterday (ECF No. 291). Defendant's Motion did not include a Local Rule 7.1 statement of conferral and therefore, it may not have been clear that Plaintiffs oppose sealing the great majority of exhibits identified in Appendix B of the Motion. Plaintiffs advised Defendants of their opposition since at least September 20, well before the Motion was filed. To be clear, Plaintiffs do not oppose the redaction of agreed-upon portions of the exhibits identified in Appendix A of the Motion, and the parties agree that the exhibits identified in Appendix C of the Motion do not require sealing or redaction. The parties do, however, continue to disagree about the exhibits listed in Appendix B. The sealing of such exhibits, even on a temporary basis, will impact Plaintiffs' opening statement and examination of witnesses, unless the Court revisits this issue and resolves Defendants' request to seal exhibits before trial begins.

As the Court is aware, sealing documents or redacting information relevant to a trial record necessarily compromises the public's right to access and is inconsistent with the spirit of public trials. This is why such measures are to be used sparingly and only in "exceptional

circumstances.” *FTC v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 410 (1st Cir. 1987); *see also In re Nexium (Esomeprazole) Antitrust Litig.*, 297 F.R.D. 168, 178 n.4 (D. Mass. 2013) (“Courts are public institutions, deriving their just powers from the consent of the governed.”).

Additionally, and omitted by Defendants in their Motion, a request to seal or redact documents “must be based on a particular factual demonstration of potential harm, not on conclusory statements.” *Standard Fin. Mgmt. Corp.*, 830 F.2d at 412 (citation omitted).

Given the important public interest implicated by the Motion, Plaintiffs respectfully request leave to file an opposition brief, as Plaintiffs had originally planned, by October 17 (earlier than provided under Local Rule 7.1(b)(2)) or any such date the Court orders.

Alternatively, Plaintiffs request that the Court require Defendants to file a motion to seal permanently any exhibits as to which the Parties disagree on sealing. This alternative approach would distinguish between exhibits that are subject to ongoing conferral from exhibits that require the Court’s resolution because the parties are at an impasse. This alternative approach would likewise ensure that the confidentiality treatment of such exhibits is resolved prior to the start of trial so that the trial may proceed in an orderly manner.

Dated: October 12, 2023

Respectfully submitted,

/s/ Edward W. Duffy

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*Attorneys for the United States of America, the  
Commonwealth of Massachusetts, and the District of  
Columbia, and on behalf of all Plaintiffs*

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1**

Pursuant to Local Rule 7.1(a)(2), I hereby certify that Plaintiffs conferred with counsel for Defendants in a good-faith effort to resolve or narrow the issues presented in this motion prior to filing. Defendants confirmed that they oppose the motion.

/s/ Edward W. Duffy

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document, which was filed with the Court through the CM/ECF system, will be sent electronically to all registered participants as identified on the Notice of Electronic Filing.

/s/ Edward W. Duffy

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